

ISSUES

The issues for determination by the Appeals Board are the same as those considered by the Special Administrative Law Judge, to wit:

- (1) Claimant's average weekly wage;
- (2) Nature and extent of claimant's disability;
- (3) Whether claimant is entitled to reimbursement for unauthorized medical expense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds that the Award entered by the Special Administrative Law Judge should be affirmed. The findings of fact and conclusions of the law enumerated in the Award are found to be accurate, appropriate and are hereby adopted by the Appeals Board as if specifically set forth herein.

The Appeals Board agrees with the finding by the Special Administrative Law Judge that claimant has proven a work disability and pursuant to Hughes v. Inland Container Corp., 247 Kan. 407, 779 P.2d 1011 (1990) permanent partial general disability should be determined by the extent (percentage) of reduction of the employee's ability to perform work in the open labor market and the employee's ability to earn a comparable wage. Both prongs of this two-part test must be considered in light of the employee's education, training, experience and capacity for rehabilitation. K.S.A. 1988 Supp. 44-510e(a). We likewise agree with the approach taken by the Special Administrative Law Judge and find that the facts of this case do not suggest that either part of the two-part test should be given greater weight. Therefore, in calculating permanent partial general disability, equal weight should be given to the two elements by averaging the two and arriving at a percentage of work disability. Schad v. Hearthstone Nursing Center, 16 Kan. App. 2d 50, 52-53, 816 P.2d 409, rev. denied 250 Kan. 806 (1991).

Giving due weight to the uncontroverted opinions of claimant's medical expert, Dr. Edward Prostic, and the uncontroverted opinions of claimant's vocational expert, Mr. Jerry Hardin, as to claimant's post-accident ability to earn a comparable wage in the open labor market and claimant's labor market loss, we find the claimant to have sustained a fifty-eight percent (58%) work disability.

Respondent argues that the opinions expressed in the vocational rehabilitation plan should be taken into consideration to find that claimant is capable of retraining such that she could be restored to earning a comparable wage. However, the vocational rehabilitation counselor's deposition was not taken nor were those records otherwise placed into evidence. Vocational rehabilitation files are not automatically part of the record. Furthermore, both claimant herself and Mr. Hardin testified that a six-month refresher course in a secretarial program would not give claimant the skills needed to work in an office environment nor qualify her for jobs earning wages significantly greater than the \$200 per week Mr. Hardin testified claimant is presently capable of earning. Claimant had been working for respondent for fifteen (15) years as an exterminator prior to her accident. The uncontroverted testimony of claimant and Mr. Hardin established that it is unrealistic to believe that this fifty-two (52) year old woman could be retrained in six (6) months to work in an office environment when she has not worked in that environment in recent history and furthermore, that six (6) months of training would not qualify her for a job earning comparable wage. These are found to be credible opinions. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy, and is ordinarily regarded as conclusive. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated January 24, 1994, should be, and hereby is, affirmed.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Bonnie Beitzinger, and against the respondent, Interstate Exterminating, Inc., and the insurance carrier, Aetna Casualty & Surety Company, for an accidental injury sustained on December 26, 1989, and based on an average weekly wage of \$418.61, for 114.14 weeks of temporary total disability compensation at the rate of \$271.00 per week in the sum of \$30,931.94 and 300.86 weeks of compensation at the rate of \$161.87 per week or \$48,700.21 for a 58% permanent partial general body disability, making a total award of \$79,632.15.

As of February 24, 1995, there is due and owing claimant 114.14 weeks of temporary total disability compensation at the rate of \$271.00 per week or \$30,931.94, followed by 155.43 weeks of permanent partial disability compensation at the rate of \$161.87 per week in the sum of \$25,159.45, for a total of \$56,091.39 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$23,540.76 is to be paid for 145.43 weeks at the rate of \$161.87 per week, until fully paid or further order of the Director.

Claimant should be reimbursed for unauthorized medical expense up to \$350.00 upon presentation of proof by claimant of such expense.

Claimant's contract of employment with her counsel is approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Martin D. Delmont Regular Hearing of May 1, 1992	\$ 60.45
Deposition of Bonnie Beitzinger	\$209.05
Deposition of Jerry Hardin	\$170.75
Hostetler & Associates Deposition of Edward Prostic, M.D.	\$224.95
Ireland and Barber Motion Hearing of November 1, 1991	\$ 84.60

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy Short, Pittsburg, KS
Edward D. Heath, Jr., Wichita, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director